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*NOT ADMITTED TO THE NEW YORK BAR

March 31, 2023

By ECF

Honorable Nicholas G. Garaufis
United States District Judge
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Idiakheua v. DOCCS, 20 Civ. 4169(NGG)(SJB)

Dear Judge Garaufis:

We represent Plaintiff Maritza Idiakheua ("Plaintiff") in the above-referenced action. Plaintiff respectfully submits this letter to respond to Defendants' suggestion in their March 29, 2023 letter that Plaintiff's Local Rule 56.1 Counter-Statement is improper. (ECF No. 84.)

Local Rule 56.1(b) explicitly permits the party opposing summary judgment to file a Counter-Statement that includes supplemental statements of material facts:

The papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered

paragraph in the statement of the moving party, ***and if necessary, additional paragraphs*** containing a separate, short and concise statement ***of additional material facts*** as to which it is contended that there exists a genuine issue to be tried.

(Emphasis added.) Rule 56 is similarly clear. The rule states that “[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by (A) citing to particular parts of materials in the record . . . or (B) showing that the materials cited do not establish the absence . . . of a genuine dispute.” Fed. R. Civ. P. 56(c)(1). The rule further states that “[i]f a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion.” Fed. R. Civ. P. 56(e)(2); *see also* Local Rule 56.1(d). Of course, in deciding Defendants’ motion, the Court is not restricted to considering only Defendants’ cited materials, but “may consider other materials in the record,” such as Plaintiff’s cited materials. Fed. R. Civ. P. 56(c)(3).

Moreover, although Plaintiff maintains that Defendants’ motion fails to satisfy Defendants’ initial burden of “demonstrat[ing] the absence of a genuine issue of material fact,” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), should the Court deem Defendants’ opening papers sufficient to discharge their initial burden under Rule 56(c), Plaintiff is entitled to come forward with evidence “sufficient to establish the existence of [the] element[s] essential to [her] case,” *Campo v. City of New York*, No. 19-CV-04364 (NGG)(SJB), 2022 WL 970730, at *5 (E.D.N.Y. Mar. 31, 2022). Defendants’ opening memorandum and Local Rule 56.1 statement largely ignore the swaths of evidence supporting Plaintiff’s claims. Accordingly, Plaintiff has endeavored—in her Local Rule 56.1 Counter-Statement—to provide the Court with material evidence demonstrating that there exists a genuine issue to be tried.

Despite this Court’s statement at the pre-motion conference that “it would appear that there are some factual disputes here that really would be most appropriate to put before a jury,” Dec. 21, 2022 Tr. at 8:4-6, Defendants have now moved for summary judgment. In opposition, Plaintiff is entitled to present “her view of the facts”—supported by record evidence as required by Rule 56. Dec. 21, 2022 Tr. at 8:6-8. The Court should reject any suggestion that Plaintiff’s opposition papers are improper.

Respectfully submitted,

/s/ Walter Ricciardi
Walter Ricciardi